FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 255 of 2006
(Gurudas Hiraman Ingole Vs. Hiraman Lahanu Ingole through L.Rs.)

Appeal
Application No.
Writ petition

District :
of 200

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

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Mr. R.M. Ahirrao, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 25th July, 2007

Heard Shri Ahirrao for the appellant.

The appellant is the original plaintiff. A suit was filed the plaintiff for a declaration of 1/3rd share in the suit property, for partition and separate possession of the same. In the said suit, the plaintiff also prayed for a declaration that a gift deed executed by his father Hiraman in favour of his grandson i.e. the defendant no.3 was void and illegal.

The defendants denied the claim of the plaintiff and pleaded that the property of Lahanu, the original owner, was partitioned between his two sons Hiraman and Gulab. It was further pleaded that there was a partition between Hiraman and his two sons i.e. the plaintiff and the defendant no.2, in the year 1983 and the plaintiff has already been granted

his share in the property in the said partition. The pleadings of the plaintiff challenging the validity of the Gift Deed were denied by the defendants. According to the defendants, the Gift Deed was legal and valid one.

The trial Court framed the necessary issues and held that the defendants had proved that the property was partitioned between Hiraman and his two sons in the year 1983. According to the trial Court, plaintiff had received his share in the property in view of the partition of the year 1983. The challenge to the Gift Deed on the ground that Hiraman was not the absolute owner of the property which was gifted, was also negatived on the ground that the defendants had proved partition of the year 1983 and hence Hiraman became the absolute owner of the suit property and was entitled to gift the suit property in favour of the defendant no.3. Consequently, the trial Court held that the plaintiff was not entitled to the grant of declaration as prayed for. Findings recorded by the trial Court were upheld by the appellate Court in the appeal filed by the appellant/plaintiff.

Both the Courts considered the cross-examination of the plaintiff wherein he admitted that the property was partitioned between

Hiraman and his two sons i.e. the plaintiff and the defendant no.2, in the year 1983. In view of the clear admission, the Courts held that the plaintiff could not have sought a declaration of 1/3rd share in the suit property and also the partition and separate possession of the same. The Courts further observed that the Gift Deed also could not be declared as void and illegal on the ground of exercise of fraud and coercion by the defendant no.3 as Hiraman had not challenged the validity of the Gift Deed though he lived for more than five years after the execution thereof.

The findings recoded by both the Courts are based on a proper appreciation of the material evidence on record. Findings are pure findings of facts which do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP